



STATE OF WISCONSIN
DEPARTMENT OF COMMERCE

POLICY REGARDING

CONSULTATION
WITH
WISCONSIN'S INDIAN TRIBES

A handwritten signature in cursive script, appearing to read "Jim Doyle", is written over a horizontal line.

Governor Jim Doyle

A handwritten signature in cursive script, appearing to read "Mary P. Burke", is written over a horizontal line.

Secretary Mary P. Burke

June 28, 2005

I. Introduction

The various states have a unique legal relationship with each sovereign American Indian Tribal government, as affirmed and described in federal law. This relationship is set forth in the Constitution of the United States, treaties, statutes, laws and court decisions. Wisconsin Executive Order #39, issued in February 2004, affirms the government-to-government relationship between the State of Wisconsin and each American Indian Tribal government located within the State of Wisconsin.

Government-to-government relations involve respectful and cooperative communication and dealings that are designed to achieve a consensus, to the extent possible, before a decision is made or an action is taken, and to implement programs in a collaborative manner. The Wisconsin Department of Commerce (Commerce) is committed to such government-to-government relations with the federally recognized Tribal governments of Wisconsin (Tribes). The State will employ its best efforts to achieve positive outcomes from its consultation and collaboration. The intent of this policy is to improve the planning and delivery of development assistance, while promoting services targeted for safe and healthy communities, to Tribal governments, Tribal communities, and Tribal people. Commerce will implement this policy by developing principles and a process for consultation on development and program assistance, on policies and services with respect to health and safety issues related to building design and construction, and on policies and services in regard to environmental health and welfare issues with respect to the regulation of petroleum products and tank systems and the cleanup of sites contaminated by petroleum releases from tanks in Wisconsin. It is for this purpose that this policy has been developed.

The Department of Commerce is a comprehensive state agency, headed by a cabinet-level secretary. It provides development and program assistance in areas such as marketing, business and community finance, exporting, small business advocacy, and housing. The agency issues professional credentials for the construction trades, and administers safety and building codes. It also regulates petroleum products and tank systems, and administers the Petroleum Environmental Clean-up Fund. Most of these services are provided directly by Commerce. In some regulatory areas, such as the administration of the Uniform Dwelling Code (UDC), the Department has utilized certified private, third party inspection agencies, which employ certified inspectors, to conduct the inspections, and thus, enforce the administration of the UDC statewide.

Each of the federally recognized sovereign Tribes in the State of Wisconsin is recognized by the State for its unique status and its right to self-government and self-determination. The Department of Commerce respects the fundamental principles that establish and maintain the relationship between Tribes and Commerce, and accords Tribal governments the same respect accorded to other governments.

The Department of Commerce and Tribal governments have a history of cooperation and collaboration. Since 1991, the Department has worked with the tribes and the Great Lakes Inter-Tribal Council (GLITC) to establish an economic liaison program and a technical assistance program. The Department has also administered a State-Tribal Liaison Program in the Department of Commerce. This program works with tribal entities, and provides information about state economic programs, particularly those targeted at Native Americans. The program provides "point of entry" with other state agencies for Native Americans seeking economic development-related assistance.

II. Objectives

The objectives of this policy are:

- A. To create a collaborative effort (relationship) to improve the planning and delivery of development and program assistance, which may include but not be limited to marketing, business and community

finance, exporting, small business advocacy and housing, to tribal governments, tribal communities, and tribal people.

- B. To create a collaborative effort (relationship) to promote services targeted for safe and healthy communities to tribal governments, tribal communities, and tribal people.
- C. To formalize the process and expectations for Commerce to implement a government-to-government relationship and to seek consultation with and participation of representatives of Tribal governments in policy development and program activities.
- D. To promote and develop methods of obtaining consultation on issues from Tribal governments and to involve their representatives in the Commerce decision-making process.

III. Guiding Principles

The Department of Commerce is committed to improving and maintaining effective government-to-government relations with the Tribes. The development of mutual understanding, with cultural awareness and sensitivity, is necessary to effective consultation on policy and collaboration on program operations. Toward achieving this goal, Commerce shall utilize the following principles in consulting on policy and on program issues with Tribal governments. Integration of these principles into Commerce planning and management activities will help produce positive and desired outcomes in economic and community development, building safety and construction and environmental services for Tribal community members.

- A. It is important to recognize the uniqueness of each Tribe's culture, governmental structure and processes, demographics and geography (i.e., where Tribal members are located), and other factors.
- B. Consultation involves respectful and timely communication with Tribal governments in a cooperative process that strives to achieve a consensus before a decision is made or an action is taken.
- C. Working directly with American Indian Tribes in a government-to-government manner will result in an effective, efficient, and sustainable consultation process.
- D. Consultation with Tribal governments when developing and implementing budgets, policies and programs, legislative initiatives, regulations, and other activities that are anticipated to affect American Indian Tribes or their members is necessary and respectful. This includes issues presented by the Tribes on which they would like consultation.
- E. Promotion of cooperation among affected parties is the best way to resolve issues of mutual concern.

IV. Purpose and Methods

The State of Wisconsin, represented for purposes of this policy by its Department of Commerce, with the concurrence of the Tribes as sovereign nations, will diligently seek to maintain an ongoing and meaningful process for communicating general concerns, program and funding priorities, respective roles in the provision of services to Tribal community members, and other high-level matters of mutual concern.

The Wisconsin Department of Commerce, together with the Wisconsin federally recognized Tribal governments, establishes this policy requiring consultation by and between these governments on Commerce policies and activities.

A. Annual Meetings

The Secretary of the Department of Commerce shall assume the responsibility for scheduling, in consultation with Tribal leadership, an annual consultation session at which the Secretary will be present, which must include invitations to, at a minimum, the following individuals (who may designate another individual with appropriate authority to attend):

- Chairperson, Bad River Band of Lake Superior Tribe of Chippewa Indians
- President, Ho-Chunk Nation
- Chairperson, Lac Courte Oreilles Band of Lake Superior Chippewa
- President, Lac du Flambeau Band of Lake Superior Chippewa Indians
- Chairperson, Menominee Indian Tribe of Wisconsin
- Chairperson, Oneida Tribe of Indians of Wisconsin
- Chairperson, Forest County Potawatomi Community
- Chairperson, Red Cliff Band of Lake Superior Chippewas
- Chairperson, Sokaogon Chippewa Community
- Chairperson, St. Croix Chippewa Indians of Wisconsin
- President, Stockbridge-Munsee Band of Mohican Indians
- Tribal Administrators and program staff as determined by the Tribal Leadership
- The Secretary of the Wisconsin Department of Commerce
- Commerce administrators and other staff as determined by the Secretary

The agenda, date, and location of the consultation session shall be determined jointly by the Secretary and Tribal Chairperson(s) and Presidents. The schedule will take into account the desirability of allowing adequate time during even numbered years for development of Tribal biennial budget initiatives.

It shall be part of the consultation agenda for at least one meeting to review and evaluate the accomplishments and effectiveness of the previous year's Department of Commerce action plan (see Section IV-B) and to establish mutual goals for the current year's action plan. The agenda shall also include a current Department of Commerce organizational chart.

B. Other Meetings

The Secretary of the Department of Commerce shall assume the responsibility for scheduling, in consultation with Tribal leadership, additional consultation sessions at his or her discretion. In addition, any Tribal Chairperson or President may request meetings or other consultation with the Secretary or other Commerce representatives.

C. Annual Action Plan

The Department of Commerce shall establish, through the Department of Commerce State-Tribal Liaison, an annual action plan by which this government-to-government consultation policy shall be implemented. The action plan shall include:

- Programs: A list of programs and services available to Tribes, including an overview of Commerce programs and a Commerce organizational chart.
- Policy and Program Development: Description of new or proposed initiatives, programs, and policies affecting Tribes.
- Priorities: Priority issues for resolution in conjunction with the Tribes.

- Consultation Process: The procedures to be used to consult with Tribes on existing and new policies and programs.
- Evaluation Process: The process to determine the effectiveness of the action plan with respect to the consultation process and to the programmatic, fiscal, biennial budget planning, and other aspects of applicable development assistance, building and construction safety, and environmental and regulatory assistance service programs identified in the consultation plan.

D. Training

It shall be part of consultation agendas to establish periodic and ongoing training sessions for appropriate Commerce employees and other individuals. The purpose of this training is to educate Commerce employees regarding the requirements of a meaningful government-to-government relationship, including historical and cultural perspectives from the Tribes, and information about the importance of consensus building, Tribal sovereignty, Tribal government, and Tribal development. The Department of Administration's Division of Intergovernmental Relations shall facilitate the curriculum and training for appropriate employees.

V. Resolution of Issues

Throughout any given year, specific issues affecting one or more Tribes and the Department of Commerce may arise. These issues may be raised by either a Tribe or the Department of Commerce and may occur at various levels within either party. The following process is to be used when such issues arise.

A. Initial Discussion

When an issue arises and a designated and authorized representative of either a Tribe or the Department of Commerce contacts an employee of the other entity, they will discuss the issue and attempt to resolve it in a timely manner. If higher-level involvement is required, the process described in Section V-B will be followed.

If resolution or non-resolution of the issue would affect a Tribe or Tribes other than the Tribe involved, then further discussion must occur as described in Section V-C.

If a higher level decision maker changes a decision from the initial discussion, all parties will be notified in a timely manner, typically within 10 business days.

B. Issues Requiring Higher Level Involvement

If higher-level involvement is needed, the issue will be raised to the appropriate level in the Department of Commerce and Tribe for resolution. Within the Department of Commerce, the State-Tribal Liaison will facilitate contact with the appropriate staff or management, if required. Communication between those parties shall occur as soon as reasonably possible to determine if the issue can be resolved. If the issue is resolved, no further action is required. If the issue cannot be resolved, the involved parties will determine if a process can be established for resolving the issue within 30 business days. It is recognized that some issues may not be able to be resolved to the satisfaction of all parties.

C. Issues Affecting More Than One Tribe

If it is determined that resolution or non-resolution of the issue will affect more Tribes than just the Tribe presently involved in the discussion, the Department of Commerce representative will make contact with

representatives of all other Tribes. Communication involving all of the potentially affected parties will occur and will be facilitated by a Commerce representative.

If the issue is resolved through agreement of the involved parties, no further action is required. If the issue cannot be resolved, then the issue shall be raised to higher-level authorities as described in Section V-B.

VI. Outreach to Tribal Governments by Committees and Workgroups

The focus of this consultation policy is with individual Tribal governments. During the normal course of business, it is often necessary for Commerce to establish committees, councils, workgroups, or similar bodies to provide advice and recommendations to Commerce. Such committees, councils, workgroups or similar bodies, when dealing with policies or programs affecting tribal governments, shall inform tribal Chairpersons/Presidents, in writing, of the proposed policy or program in order to solicit tribal input.

Appendix A

GLOSSARY

For purposes of this consultation policy, the following terms and definitions will apply:

"American Indian Tribal government" means a sovereign government of a Native American people, embracing and occupying lands and territory, and having jurisdiction over same, lying within the geographical boundaries of the State of Wisconsin, which sovereignty is recognized by the Government of the United States of America and subject to the Constitution, laws and treaties of the United States of America, which also may be known as a "federally recognized Indian Tribe."

"Commerce" or "Department" means the Wisconsin Department of Commerce.

"Consultation" references a tool used to facilitate communication and interaction between the state government entity and all of the federally recognized Tribes in Wisconsin.

"Cultural awareness and sensitivity" means having due knowledge of and regard for the behavior patterns, civilization, customs, arts, beliefs, institutions and all other achievements and manifestations of human work and thought as expressed in a particular community.

"State-Tribal Liaison" means the position that is presently located in the Bureau of Minority Business Finance in the Division of Business Development, which serves as a clearinghouse for agency programs that impact tribal governments, tribal communities and tribal people, and has agency responsibility for providing technical assistance to tribal governments, tribal communities, and tribal peoples.

"Division" means a subunit of the Department of Commerce responsible for the management, administration, and provision of programs and services in specific program areas. For purposes of this agreement, "division" relates to one or more of the following divisions: Business Development, Community Development, International and Export Development, Environmental and Regulatory Services, Safety and Buildings, and Administrative Services.

"Government-to-government" means communication and dealings between sovereign governments, their agencies and other official entities.

"Sovereign" means a state in which supreme authority is vested.

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